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Board of Commissioners of Public Utilities
Prince Charles Building
120 Torbay Road, P.O. Box 21040
St. John's, NL A1A 5B2

Attention: Jo-Anne Galarneau
Executive Director and Board Secretary

Re: Newfoundland Power Inc.'s 2024 Rate of Return on Rate Base Application – Hydro's Comments

On November 23, 2023, Newfoundland Power Inc. ("Newfoundland Power") filed an application for approval of Newfoundland Power's 2024 forecast average rate base and rate of return on rate base ("Application").¹ Specifically, Newfoundland Power requested approval of (i) a forecast average rate base for 2024 of \$1,360,058,000; (ii) a rate of return on average rate base for 2024 of 6.85% in a range of 6.67% to 7.03%; (iii) forecast revenue requirements from customer rates for 2024 of \$711,080,000; (iv) rates, tolls and charges, to be effective for service provided on and after July 1, 2024, as set out in Schedule A to this Application; and (v) deferred cost recovery of \$6,722,000 for 2024. The approval of these requests would result in an overall average increase in current customer rates of 1.5% effective July 1, 2024.

The following are Newfoundland and Labrador Hydro's ("Hydro") comments with respect to Newfoundland Power's Application.

Background

Newfoundland Power last applied for its rate of return on average rate base in its 2022/2023 GRA; the proposal was 7.19% in a range of 7.01% to 7.37% for 2022, and 6.97% in a range of 6.79% to 7.15% for 2023. Pursuant to a settlement agreement entered into by the parties in Newfoundland Power's 2022/2023 GRA, the rate of return on average rate base approved by the Board in Order No. P.U. 3(2022) was 6.61% in a range of 6.43% to 6.79% for 2022, and 6.39% in a range of 6.21% to 6.57% for 2023. In that same Order, the Board also directed Newfoundland Power to file an application on or before November 15, 2023, for approval of the 2024 forecast average rate base and rate of return on rate base, maintaining the common equity ratio and return on common equity accepted for rate setting in this Order.

Newfoundland Power submitted that its 2024 forecast average rate base is \$1,360,058,000 and that a just and reasonable rate of return on rate base for Newfoundland Power for 2024 would be 6.85% in a

¹ Newfoundland Power had originally filed on November 9, 2023, its 2025/2026 General Rate Application ("GRA") which sought the approval of Newfoundland Power's 2024 forecast average rate base and rate of return on rate base, as well as approval of the Company's 2025 and 2026 test year revenue requirements. The Board of Commissioners of Public Utilities ("Board") directed that Newfoundland Power file a separate application relating to approval of its 2024 forecast average rate base and rate of return on rate base.

range of 6.67% to 7.03%. As the 2024 average rate base and proposed rate of return on rate base are higher than the 2023 test year amounts approved by the Board in the 2022/2023 GRA, Newfoundland Power indicates that there would be a need to recover an additional \$11,835,000 in revenue requirement. To recover the additional revenue requirement, Newfoundland Power proposes an average increase in customer rates of approximately 1.5%. As noted in Newfoundland Power's response to NLH-NP-008 of this Application, the combined impact of the proposed rate increase along with the annual July 1, 2024 rate adjustment² is estimated to be in the range of 8.2% to 9.0%.

Hydro's Comments

Newfoundland Power confirmed that, absent an application to the Board for approval of an updated average rate base, its forecasted rate of return on rate base in 2024 would be 6.21%;³ this is at the low end but within the currently approved range of return on rate base.

Newfoundland Power referenced the decision of the Newfoundland and Labrador Court of Appeal in *Section 101 of the Public Utilities Act (Newfoundland)(Re)* ("Stated Case") wherein Justice Green stated that the mid-point of a stated range of rates of return, chosen by the Board to be used for determining rates, is a perfectly acceptable practice.⁴ Justice Green also noted in the paragraphs preceding that statement that it is a reasonable practice to indicate a just and reasonable return in terms of a range of rates of return. Justice Green noted that "s. 80(1) [of the *Public Utilities Act*] does not speak in terms of a "rate" or "rates" of return; rather, it speaks of a just and reasonable "return". It is not limited by its language to the pinpointing of a particular rate of return." Justice Green concluded that ". . . a liberal construction of the word "return" in the context of s. 80(1) leads to the conclusion that it can include a range of rates of return."⁵ The mid-point is chosen in practice as a single figure is needed as rates, tolls and charges are expressed as finite numbers; however, a rate of return within the approved range would also be considered just and reasonable.

The jurisdictional scan Newfoundland Power provided in its response to PUB-NP-004 of this Application indicated that the utilities in Atlantic Canada that employ a pure cost of service rate setting approach generally leave the costs associated with their test years unchanged between test years.⁶ Other utilities identified in the jurisdictional scan that make changes between test years make more comprehensive changes than merely forecast rate base and return on rate base, such as inflationary and efficiency adjustments. Newfoundland Power noted that the inconsistency with the practices in other jurisdictions was based on compliance with the Board's prior Order(s) regarding updates to the average rate base and return on rate base.

Hydro notes that in the Board's Order on Newfoundland Power's 2013/2014 GRA,⁷ the Board noted Newfoundland Power's statement that it prefers the certainty of setting a rate of return for a period of time—at that time a three-year period between test years was considered reasonable and generally consistent with sound utility regulation. The Board also noted that it would monitor economic conditions throughout the period and "if there is a *dramatic* change in circumstances which suggest that

² Annual rate stabilization and municipal tax adjustments pursuant to Newfoundland Power's *Schedule of Rates, Rules & Regulations*.

³ Please refer to Newfoundland Power's responses to NLH-NP-003 and NLH-NP-012 of this Application.

⁴ Section 101 of the Public Utilities Act (Newfoundland) (Re), 1998 CanLII 18064 (NL CA), <<https://canlii.ca/t/27pwh>>, para. 69.

⁵ *Supra*, f.n. 4, para. 68.

⁶ Hydro has not applied for, been directed to apply for, nor been approved for annual adjustments to average rate base or rate of return.

⁷ *Public Utilities Act*, RSNL 1990, c P-47, Board Order No. P.U. 13(2013), Board of Commissioners of Public Utilities, April 17, 2013.

the established rate of return is unfair” Newfoundland Power could file an application.⁸ In the years since that Order, Newfoundland Power has updated its return on rate base each year through either a general rate application or an application for a revision to its return on rate base. There were no impacts to customers in any of those years.⁹ Hydro notes that Newfoundland Power’s 2025/2026 GRA is underway, within the three-year timeframe noted in Board Order No. P.U. 13(2013), and that maintaining the rate of return at its currently approved level pending review in the GRA would be reasonable.

Newfoundland Power has noted the statutory framework, recognized by in Board Order No. P.U. 32(2007), Appendix A, and the consistency of the fair return principle in providing utilities with the opportunity to earn a fair rate of return. The regulatory framework referenced by the Board noted the goal of an equitable balance between the issues of consumers and the utility. In referencing the Stated Case, the Board noted that in making its decisions the Board must balance the interests of public utilities and customers. The Board quoted from Justice Green in stating:

... in choosing to exercise a particular power within the Board’s jurisdiction, the Board must always be mindful of whether, in so acting, it will be furthering the objectives and policies of the legislation and doing so in a manner that amounts to a reasonable balance between the competing interests involved.¹⁰

The Board noted that, with respect to the end result, in compliance with legislation, it must be fair, just and reasonable for both the consumer and the utility.

Conclusion

Hydro notes that the Board directed Newfoundland Power to file the Application and that it has been the practice of Newfoundland Power to update its return on average rate base yearly; however, annual updates such as these are not commonly practiced in other jurisdictions. An increase to Newfoundland Power’s return on average rate base would have a direct impact on customers in the form of a rate increase, and without the proposed cost recovery Newfoundland Power would continue to earn within the currently approved range which is considered to be a fair and reasonable rate of return as indicated by Justice Green in the Stated Case. Hydro believes that to reasonably balance the interests of Newfoundland Power and the interests of customers, Newfoundland Power should continue to earn within the currently approved range, and approval should not be granted to update the average rate base outside of a test year.

Should you have any questions, please contact the undersigned.

Yours truly,

NEWFOUNDLAND AND LABRADOR HYDRO



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⁸ *Supra*, f.n. 7, p. 37/19–20.

⁹ “Newfoundland Power Inc. – 2024 Rate of Return on Rate Base Application,” Grant Thornton, April 5, 2024, pp. 13–14.

¹⁰ *Public Utilities Act*, RSNL 1990, c P-47, Board Order No. P.U. 32(2007), Board of Commissioners of Public Utilities, app. A, p. 4 of 11.

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